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**Christine Joyce**

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**From:** Karen O'Neill [kobirdbrain@gmail.com]  
**Sent:** Monday, June 03, 2013 6:32 PM  
**To:** Manager Department; Mike Gowing  
**Subject:** Materials for Selectmens Meeting June 10  
**Attachments:** CR 2013-05-29-1.doc

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Attached please find the Conservation Restriction that will be review on June 10th with the Selectmen. Please let me know the time I will be presenting.

Thank you.

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*Karen*

## CONSERVATION RESTRICTION

### **I. Grantor Clause:**

The Town of Acton, having an address at 472 Main Street, Acton, Massachusetts 01720 ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, hereby grants to the Acton Conservation Trust, a Massachusetts non-profit land trust having an address of P.O. Box 658, Acton, Massachusetts 01720, and Sudbury Valley Trustees, Inc., a Massachusetts non-profit corporation having an address of 18 Wolbach Road, Sudbury, Massachusetts 01776 (collectively, the "Grantees"), in perpetuity and exclusively for conservation purposes, for consideration of one dollar (\$1), the following described Conservation Restriction on a parcel of land located at 2 Stow Street in the Town of Acton, Massachusetts, constituting approximately 8.503 acres, said parcel being shown as Conservation Restriction area on a plan entitled "Plan of Land in Acton, Massachusetts (Middlesex County)". Initially prepared by Stamski & McNary, Inc., for the Town of Acton dated November 30, 2010, recorded with the Middlesex South Registry of Deeds as Plan No. 858 of 2010, it was revised as a Progress Print, dated May 24, 2013, attached as **Exhibit A**, to depict the Conservation Restriction **area** (the "Premises"). Said parcel is a portion of Parcel 62 on Acton Town Atlas Map H-2A. For Grantor's title, see the Order of Taking recorded with the Middlesex South Registry of Deeds at Book 56002, Page 378 and the Confirmatory Deed recorded with the Middlesex South Registry of Deeds at Book 56002, Page 381 on December 7, 2010.

**Grantor:** Town of Acton

**Grantees:** Sudbury Valley Trustees, Inc. and Acton Conservation Trust

**Address of property:** 2 Stow Street, Acton, Massachusetts

**Title Reference:** Middlesex South Registry of Deeds at Book 56002, Page 381

## **II. Purposes:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained as agricultural property and/or in a natural, scenic and underdeveloped condition in perpetuity for conservation purposes and passive recreation purposes, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values. These values, all of which are in the public interest, include the following:

- a) The preservation of the Premises for agricultural use;
- b) The preservation of the Premises as open space and access to trails;
- c) The preservation of the ecological values of the Premises, including habitat for various wildlife in the area and protection of water resources;
- d) The preservation of the scenic beauty and rural character of the Premises; and
- e) The preservation of the archaeological, historic and cultural values of the Premises.

The Premises were acquired with Community Preservation Act funding (M.G.L. c. 44B) from the Town of Acton and shall be maintained in perpetuity for the purposes stated in Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and shall be fully protected by all provisions of Article 97.

Therefore, in order to preserve the Premises in perpetuity in its present natural, scenic, and open condition, the Grantor conveys to the Grantee a perpetual Conservation Restriction within the meaning of Chapter 184, Section 31 et seq. of the General Laws of Massachusetts, as amended.

## **III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:**

### **A. Prohibited Acts and Uses**

Subject to the exceptions and reserved rights set forth herein, the Grantor will not perform or permit the following acts and uses which are prohibited on, above, and below the Premises:

1. Buildings, Structures, Facilities and Improvements. Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, public parking for motorized vehicles, sign, fence, billboard or other advertising display, antenna/tower, utility pole/conduit, or other temporary or permanent structure or facility;

2. Excavating Soil, Mineral Resources, etc. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resources or natural deposits or other processes such as hydraulic fracturing that might allow mining to or from adjacent properties;
3. Dumping of Refuse and Other Materials. Placing, filling, storing or dumping soil, grass clippings, compost, yard debris or other substances on the ground or dumping or placing of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, trash, solid or chemical waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting of Vegetation. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
5. Motorized Vehicles or Watercraft. Use, parking or storage of motorized vehicles of any kind, including but not limited to automobiles, motorcycles, mopeds, all-terrain vehicles, snowmobiles or any other motorized vehicles or watercraft on the Premises, except for vehicles permitted in conjunction with activities as permitted under Paragraph III.B;
6. Historical or Archaeological Resources. The disruption, removal, or destruction of any historical or archaeological resource, including but not limited to stone walls and granite fence posts;
7. Subdivision. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
8. Commercial Recreational, Business, Residential or Industrial Uses. The use of the Premises for commercial recreation, business, residential or industrial use; and
9. Active Team Sports Recreation. The use of the Premises for active recreation defined as team or school sports.

## **B. Reserved Rights and Exceptions**

All acts and uses not prohibited in Paragraph III.A above are permissible, provided that such acts and uses do not materially impair the purposes of this Conservation Restriction or other significant conservation interests. The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

1. Recreational Activities. Fishing, boating, biking, walking, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape and do not degrade environmental quality;
2. Educational Activities. Organized walks, educational programs, school field trips, farm

tours, and other similar activities designed to promote an understanding of nature, conservation, agriculture and/or history;

3. Vegetation Management. In accordance with generally accepted land conservation and management practices, removing of brush, selective minimal pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, and regular mowing at least once a year to prevent reforestation; and the planting of native trees and shrubs and the mowing of grass;

4. Agricultural Management.

- (a) clearing, semi-annual mowing, and prescribed burning of vegetation;
- (b) The planting, maintenance, cultivation, and harvesting of crops or fruit- or nut-bearing trees, together with soil preparation, conservation, and management activities commonly associated with such agricultural uses, including the plowing of agricultural fields and the addition of soil amendments, such as lime or compost (generated on or off the Premises), and grazing of livestock;
- (c) The use of fertilizers, pesticides, herbicides, and fungicides, provided, however, that such agricultural chemicals are registered under Commonwealth of Massachusetts regulations and are used in accordance and consistent with all pertinent federal, state, and local instructions, limitations, laws, zoning, rules, and regulations. All agricultural chemicals must be applied to affect the target species and not non-target species, to the extent that is possible. At the same time, non-chemical, naturally sustainable and/or organic farming methods are also allowed;
- (d) The maintenance of piles of limbs, brush, manure, leaves, compost, and similar biodegradable material generated on the Premises, but not stumps, provided such piles are not placed in any wetlands, and do not otherwise interfere with the conservation objectives of this Conservation Restriction; manure may not be stockpiled within any wetland buffer zones;
- (e) The installation, maintenance, and removal of temporary, sight-pervious fences, including but not limited to electric fences, for the purposes of i) minimizing crop damage by wildlife during the growing season, provided, that such fencing be removed at the end of each growing season; and ii) containing grazing livestock on the Premises, provided that such fencing be removed when grazing is not occurring. Electric fences may remain in place if they are turned off when not in use and if gates are left open when not in use;
- (f) The digging or drilling of water supply wells, together with the installation, construction, and placement of permanent underground and temporary aboveground pumps, conduits, hoses, and other equipment all as exclusively associated with agricultural irrigation on the Premises. Prior to commencing any such activities, plans for the wells and irrigation equipment shall be developed by the Grantor, after

consultation with the Grantees, and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

- (g) Marketing of agricultural products that are grown on the Premises. Additionally, the construction, use, maintenance, repair, replacement, and removal of one (1) temporary structure not to exceed two hundred (200) square feet for the explicit use as a farmstand to support said marketing, provided however that such structure shall not have a permanent foundation including but not limited to a poured concrete pad, foundation, or footings. Prior to commencing any such activities, plans for the structure shall be developed by the Grantor, after consultation with the Grantees, and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;
- (h) Use of vehicles and other motorized equipment only as necessary for the agricultural management activities contemplated herein, including but not limited to tractors, trucks, balers, spreaders and planters, and similar types of vehicles;
- (i) Construction of, or addition to, stone walls and/or piles incidental to the removal of rocks from plowed areas; and
- (j) Activities authorized in the Farm Lease executed by the Grantor and its tenant, dated December 7, 2010 attached as Exhibit B.

Further, agricultural practices may only occur in such a manner as to minimize impact to water quality, reduce physical disturbance to sensitive areas, and reduce discharge of sediments, animal waste, nutrients, and chemicals to surface waters using best management practices that comply with all applicable federal, state and local environmental laws and regulations.

5. Non-Native or Nuisance Species. The removal of non-native, nuisance or invasive species, the interplanting of native species, including but not limited to beaver management, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality and scenic vistas;

6. Soil Management. Excavation and removal from the Premises of soil, gravel or other mineral resources or natural deposits (a) as may be incidental to the maintenance of trails, bikeways, access roads or (b) to maintain good drainage and hydrologic functioning of the Premises, provided that (a) such activities follow generally accepted soil conservation practices, and (b) disturbed areas are re-vegetated with native plant materials; and only after Grantor consultation with Grantees and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

7. Wildlife Habitat Improvement. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including but not limited to selective planting of native trees, shrubs and plant species, and avian nesting structures; and only after Grantor consultation with Grantees and with the Grantees'

approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

8. Archaeological Investigations. The conduct of archaeological activities, including but not limited to surveys, following submission of a Project Notification Form and its approval by the State Archaeologist/State Historic Preservation Office of the Massachusetts Historical Commission (or appropriate successor official); and only after Grantor consultation with Grantees and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

9. Signs. The erection, maintenance and replacement of signs and kiosks by the Grantor or Grantees, identifying the Grantees as the holders of the Conservation Restriction and the Grantor as the owner of the Premises, and educating the public about trail access, the protected conservation values and any rules pertaining to uses of the Premises;

10. Permitted Vehicles. Use of vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties and trucks and other vehicles used for activities permitted by this Conservation Restriction and motorized and non-motorized vehicles to assist the mobility of handicapped persons;

11. Ponds. Activities necessary for the maintenance of existing ponds, including the removal of silt, earth, clay, loam, debris or invasive species, and the construction, repair, operation and maintenance of dams, spillways and water control devices thereon; and only after Grantor consultation with Grantees and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

12. Utilities. The construction, use, maintenance and replacement of utilities to serve all allowed uses on the Premises; however, the repair or replacement of existing utilities in their current locations shall require prior notice to (but not approval of) Grantees, and new construction, expansion or relocation of utilities shall require Grantor consultation with Grantees and Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld. Unless there is no practical alternative, new utilities shall be constructed underground;

13. Foot Bridge. Activities necessary for the maintenance of the existing bridge on the Premises with prior notice to (but not approval of) the Grantees and activities necessary for the removal and/or replacement of the existing bridge but only after Grantor consultation with Grantees and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

14. Allowable New Structures. In addition to the structures described above in Paragraph **III.B**, allowable new structures may also include boardwalks, structures facilitating pond access for fishing or non-motorized boating, temporary portable toilets, benches, temporary agriculture structures such as greenhouses or high tunnels and any structures required by federal, state and local laws and regulations; and only after Grantor consultation with Grantees and with the Grantees' approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld; and

15. Cleanup of Oil and Hazardous Materials. Notwithstanding anything herein to the contrary, nothing in this Conservation Restriction shall restrict the right to conduct any and all reasonably necessary environmental response actions on the Premises to address the release or future release of oil or hazardous materials on the Premises, provided that such response actions are conducted in compliance with all applicable federal and state laws and regulations.

### **C. Permitted Acts and Uses**

All acts and uses not explicitly permitted by Section III, Paragraph B are prohibited unless otherwise approved as described in Paragraph III.E below.

### **D. Governmental Permits**

The exercise of any right reserved by Grantor under Paragraph III.B shall be in compliance with the following: (a) then current building, zoning, land use, planning and conservation bylaws, ordinances and regulations applicable to the Premises; (b) any variances or special permits applicable to the Premises; (c) the Wetlands Protection Act (G.L. c. 131, Section 40) and (d) all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency means only that the Grantor may have a right to request a permit; it does not mean that the Grantee or the Commonwealth of Massachusetts takes any position on whether such permit should be issued.

### **E. Notice and Approval**

Whenever notice to or approval by Grantee is required under the provisions of Paragraphs III.A or B, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, the Acton Conservation Trust and Sudbury Valley Trustees, Inc. shall act collectively with one consolidated response, as Grantee, and they shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing with a collective response in 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.



## **IV. LEGAL REMEDIES OF THE GRANTEE**

### **A. Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. To the extent permitted by law, Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in good faith enforcement of this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof; provided, however, that Grantor shall not be obligated to reimburse Grantee for costs and expenses related to any such enforcement that Grantor successfully challenges as evidenced by a final, unappealed determination of a court of competent jurisdiction.

### **B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

### **C. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

### **D. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

## **V. ACCESS**

### **A. Access by the Grantee**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be reasonably necessary or appropriate to remedy or abate any violation hereof.

### **B. Access by the Public**

The Grantor and the Grantee agree that the Grantor shall have the right to permit the general public access to the Premises for fishing, boating, biking, walking, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities on the established trails on the Premises, except during certain limited times of the year when such access would interfere with agricultural activities being conducted on the Premises, in which case limited public access must be posted on the Premises, including the dates during which such limitations or access prohibitions are in effect. The Grantor hereby reserves the right to alter the locations of established trails, provided that as so relocated, neither the conservation values of this Conservation Restriction nor access to and passage through the Premises is impaired. To the extent permitted by law, the Grantee hereby expressly disclaims any duty to maintain the Premises or warn persons who may enter upon the same. Pursuant to M.G.L. c. 21, s. 17c, neither the Grantor nor the Grantee is liable to any member of the public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct.

## **VI. EXTINGUISHMENT**

### **A. Termination by Judicial Proceeding Only**

If circumstances arise in the future which render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction under applicable law.

### **B. The Grantee's Property Right in the Conservation Restriction; Value**

Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to

the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

### **C. Grantee's Right to Recover Value of its Property Right**

If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to the proportionate value set forth in Paragraph VI.B. All reasonable and directly-related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds.

### **D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by the state or federal government by public authority under power of eminent domain, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to the proportionate value set forth in Paragraph VI.B. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds

### **E. Grantee's Use of Proceeds**

Grantee shall use its share of any proceeds it receives pursuant to this Section VI to support is conservation mission.

## **VII. ASSIGNABILITY**

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, is a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. The Grantor shall not be liable for violations occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **IX. ESTOPPEL CERTIFICATES**

Upon a reasonable request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction or otherwise evidences the status of this Conservation Restriction.

## **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and, if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

## **XI. PUBLIC USE**

Grantor, Grantee and their successors and assigns shall have the benefit of Section 17C of Chapter 21 of the Massachusetts General Laws with respect to any person using the Premises for recreational, conservation, scientific, educational, environmental, ecological, research, religious or charitable purposes.

## **XII. NON-MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to, any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

## **XIII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the Middlesex South District Registry of Deeds. The Grantee shall record this instrument in timely manner in said Registry of Deeds.

## **XIV. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Acton  
472 Main Street  
Acton, MA 01720  
Attention: Town Manager

To Grantee: Sudbury Valley Trustees  
18 Wolbach Road  
Sudbury, MA 01776  
Attention: Executive Director

Acton Conservation Trust  
PO Box 658  
Acton, MA 01720

or to such other address as any of the above parties shall designate from time to time by written notice to the other or that is reasonably ascertainable by the parties.

## **XV. GENERAL PROVISIONS**

### **A. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

### **B. Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

### **C. Severability**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

### **D. Entire Agreement**

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

### **E. Pre-existing Public Rights**

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

### **F. Running of the Burden**

The burden of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **G. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on Grantor's behalf. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree themselves to execute any such instruments upon request.

## **H. Baseline Documentation**

In order to establish the present condition of the Premises and the conservation values thereon that are protected by this Conservation Restriction, so as to enable the Grantee to monitor future uses of the Premises and to assure compliance with the terms hereof, Grantee has prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report"), and Grantor and Grantee agree that the same is an accurate representation of the condition of the Premises as of the date of the execution of this Conservation Restriction. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the Premises as of the date of this Conservation Restriction.

## **I. Subordination**

Grantor represents, and Grantee relies on Grantor's representation that, to the best of Grantor's knowledge, the Premises are free from any lien, encumbrance or other interest by any third party other than the items listed on Exhibit C attached hereto.

No documentary stamps are required hereon because the Grantee is a municipality.

IN WITNESS WHEREOF, the said Town of Acton acting by and through its Board of Selectmen, in compliance with M.G.L. c. 44B and the Town Meeting vote, an attested copy of which attached hereto as Exhibit C, has caused these presents to be signed, acknowledged and delivered on this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

TOWN OF ACTON  
BOARD OF SELECTMEN

\_\_\_\_\_  
Michael Gowing

\_\_\_\_\_  
Janet K. Adachi

\_\_\_\_\_  
Pamela A. Harting-Barrat



\_\_\_\_\_  
John Sonner

\_\_\_\_\_  
David Clough

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_,

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as  
Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification  
which was ☐ government-issued document bearing the signer's photographic image and signature  
☐ my personal knowledge of the principal's identity, to be the persons whose names are signed on  
the preceding document, and acknowledged to me that they signed it voluntarily for its stated  
purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF  
ACTON CONSERVATION TRUST  
AND  
SUDBURY VALLEY TRUSTEES, INC.

The above Conservation Restriction is accepted by the Acton Conservation Trust and Sudbury Valley, Trustees, Inc. as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ACTON CONSERVATION TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto duly authorized

SUDBURY VALLEY TRUSTEES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS  
Middlesex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_, of the Acton Conservation Trust, proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared \_\_\_\_\_, of the Sudbury Valley Trustees, Inc., proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Acton has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Name: Richard K. Sullivan Jr.  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared Richard K. Sullivan Jr., proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

There are attached hereto or recorded simultaneously herewith and incorporated herein by reference the following Exhibits and Approvals:

**Exhibit A: Plan of Premises**

**Exhibit B: Farm Lease**

**Exhibit C: Town Meeting Approval Vote**

**Exhibit D: Liens, Encumbrances or Other Interests [To be completed at time of recording]**